



CONFIDENTIAL

In the Matter Of:

Liberation Investments, L.P.

v.

Bally Total Fitness Holding Corporation

C.A. # 1779-N

Transcript of:

Emanuel Robert Pearlman

November 22, 2005

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Page 30

1 And I also think it's possible there may be
2 other people who will be making nominations to the board
3 potentially. Because I think we have until Friday to find
4 out, I believe is the date. And so we are waiting to see
5 what happens. And depending on who has nominated whom, it's
6 possible that we would want to possibly get together with
7 someone and run a joint proxy solicitation.

8 Q There is nothing in the rights plan that prevents
9 you from voting for any of those slates that somebody also
10 nominates, is there?

11 A It's not clear. Because under Rule 13D, if I have
12 an agreement with someone to do that, we could become a
13 group and, therefore, could trigger the pill. So it's not
14 clear to me, yes, you're right, come to an election, I can
15 vote for anyone I want. But if I actually wanted to say to
16 someone I'd like to vote with you and give you -- publicly
17 do that, it could conceivably make us a group, which would
18 trigger the pill. So it has prevented us from doing things.

19 Q Do you believe that the rights plan would prevent
20 you -- let's choose partners because they have obviously
21 proposed a slate.

22 Do you believe that the pill would prevent you
23 from publicly stating that you're going to vote for Pardus'
24 slate?

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Page 31

1 A It's not clear to me.

2 Q You mentioned a few times in your answers today and
3 in some of your correspondence as well, a desire to
4 potentially get together with other stockholders with
5 respect to their director nominees. If Pardus or anyone
6 else is running a slate, why would you want to spend money
7 and join with them when you could just vote for them and
8 have them run the solicitation?

9 MR. JENKINS: I object to the form of the
10 question. But you may answer it.

11 THE WITNESS: Because conceivably anyone who is
12 running directors, if several large shareholders are all
13 supportive of running, not just voting for them, but sort of
14 agreeing to work together to get those people elected, there
15 may be a much higher likelihood of shareholders being able
16 to elect directors who they'd like to have at the company.

17 BY MR. DiCAMILLO:

18 Q You could publicly announce your support for Pardus'
19 slate without reaching an agreement with Pardus, is that
20 right?

21 MR. JENKINS: Objection. That calls for a
22 legal conclusion. To the extent you think you can answer
23 it, go ahead.

24 THE WITNESS: I don't know. I have concerns
25

Page 30

1 about that.
2 BY MR. DiCAMILLO:
3 Q You have concerns about just saying publicly without
4 any prior discussions or agreements with Pardus, I support
5 Pardus' slate?

6 A Yes, I do.

7 Q What's the source of that concern?

8 MR. JENKINS: Putting aside advice of counsel.
9 THE WITNESS: I am concerned that your client
10 will then try to sue us to say that we are a group. Just by
11 my publicly stating that. And so, therefore, I feel that
12 the danger of being a group, as I said before, because of
13 the poison pill, is so disastrous that it basically, you
14 know, forces us to not be able to say that. And I may also
15 want to get together with someone else and oppose Pardus'
16 directors. I don't feel I can do that either.

17 BY MR. DiCAMILLO:

18 Q Well, you have seen Pardus' slate. Do you intend to
19 oppose Pardus' nominations --

20 A I don't know enough about their directors yet to
21 make a decision.

22 Q Have you had any conversations with anyone about
23 Pardus' director nominees?

24 MR. JENKINS: Putting aside counsel.

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Page 32

1 THE WITNESS: I have spoken with one of their
2 director nominees.

3 BY MR. DiCAMILLO:

4 Q Which one?

5 A Mr. Kornstein.

6 Q Mr. Kornstein is someone that you suggested to be
7 nominated to the board, isn't that correct?

8 A Correct.

9 Q So I assume you're not going to oppose
10 Mr. Kornstein's election to the board?

11 A I don't think I would. At least from what I know
12 today.

13 Q Have you had discussions about any of the other
14 Pardus nominees?

15 A I have not.

16 Q Have you or anyone at Liberation conducted any
17 investigation of those director nominees?

18 A I have not.

19 Q Has anyone at Liberation?

20 A Not to my knowledge.

21 Q Have you authorized anyone inside or outside of
22 Liberation to investigate those director nominees?

23 A No.

24 Q What are you going to do to decide whether or not
25

X

9 (Pages 30 to 33)